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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
(DEPUTY)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GERALD FISK,

Plaintiff,

v.

METABOLIFE INTERNATIONAL,
INC., THE CHEMINS COMPANY, INC.
and ALPINE HEALTH PRODUCTS,
L.L.C.,

Defendants.

NO. **CV05-1068**

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

[DEMAND FOR JURY TRIAL]



05-CV-01068-CMP

COMES NOW the Plaintiff, GERALD FISK, by and through his attorneys,
Levinson Friedman, P.S. and Blizzard, McCarthy & Nabers, L.L.P., and states as follows:

I. PARTIES

1. At all times material, Plaintiff GERALD FISK resided in King County, in
the Western District of Washington.

2. At all times material, Defendant METABOLIFE INTERNATIONAL,
INC. ("Metabolife") has been an active California corporation doing business in King

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES-1

ORIGINAL

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1 County, in the Western District of Washington. Metabolife manufactured, marketed,
2 sold and distributed Metabolife 356, a dietary supplement containing ephedra.

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4 3. At all times material, Defendant THE CHEMINS COMPANY, INC.
5 ("Chemins") has been an active Colorado corporation doing business in King County, in
6 the Western District of Washington. Chemins manufactured, sold and distributed
7 Metabolife 356.

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9 4. At all times material, Defendant ALPINE HEALTH PRODUCTS,
10 L.L.C. ("Alpine") has been an active Utah corporation doing business in King County, in
11 the Western District of Washington. Alpine manufactured, sold and distributed
12 Metabolife 356.

13 II. JURISDICTION AND VENUE

14 5. Plaintiff states that the diversity requirements of 28 U.S.C. § 1332
15 have been met, that his damages exceed \$75,000, and that venue lies in the Western
16 District of Washington at Seattle, pursuant to 28 U.S.C. § 1391.

17 III. LIABILITY

18 6. Plaintiff GERALD FISK purchased and ingested an ephedra-
19 containing dietary supplement, known as Metabolife 356, in June 2002 at Costco
20 Wholesale No. 61 in Federal Way, Washington. He ingested the product according to
21 the directions set forth on the product's packaging. Dietary supplements containing
22 ephedra, including the Metabolife product ingested by Plaintiff, have since been banned
23 by the Federal Food and Drug Administration having been found to pose an
24 unreasonable risk of injury.
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2 7. On or about June 26, 2002, Plaintiff GERALD FISK suffered
3 serious injury to his optic nerve, thereby damaging his vision in his right eye.

4 8. Defendants were the manufacturers, sellers and distributors of the
5 ephedra-containing Metabolife product ingested by Plaintiff GERALD FISK.

6 9. The ephedra-containing Metabolife product was not reasonably
7 safe as designed, as provided under RCW 7.72.030(1)(a).

8 10. The ephedra-containing Metabolife product was not reasonably
9 safe because adequate warnings or instructions were not provided with the product, as
10 provided under RCW 7.72.030(1)(b).

11 11. The ephedra-containing Metabolife product was not reasonably
12 safe because adequate warnings or instructions were not provided after the product
13 was designed, distributed and sold, and the Defendants should have learned about the
14 danger connected with the product, as provided under RCW 7.72.030(1)(c).

15 12. Defendants negligently designed, tested, manufactured, labeled,
16 distributed, marketed and promoted the ephedra-containing Metabolife product. Plaintiff
17 suffered serious and permanent injuries and damages as a direct and proximate result
18 of Defendants' negligence.

19 13. The Metabolife product purchased and ingested by Plaintiff was
20 defective, unsafe and unreasonably dangerous for its intended purposes when it left the
21 control of Defendants. As a direct and proximate result of the expected use of
22 Defendants' ephedra-containing Metabolife product, Plaintiff sustained serious and
23 permanent injuries and damages.

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2 14. Defendants impliedly warranted that the ephedra-containing
3 Metabolife product was fit for the purposes it was intended.

4 15. Through Defendants' misleading labeling, product inserts,
5 brochures and aggressive advertising materials and activities, Defendants expressly
6 warranted that the ephedra-containing Metabolife product was reasonably safe and
7 effective.

8 16. Defendants breached these implied and express warranties. As a
9 direct and proximate result, Plaintiff suffered serious and permanent injuries and
10 damages.

11 17. Defendants misrepresented material facts concerning the
12 character, safety and effectiveness of the ephedra-containing Metabolife product
13 through their labeling, product inserts, brochures and advertising materials and
14 activities. Plaintiff sustained serious and permanent injuries and damages as a direct
15 and proximate result of these misrepresentations.

16 18. Defendants also engaged in unfair and deceptive trade practices in
17 violation of the Washington State Consumer Protection Act. Specifically, Defendants
18 made false representations regarding the character, safety and efficacy of the ephedra-
19 containing Metabolife product, and failed to disclose its harmful side effects. Plaintiff
20 sustained serious and permanent injuries and damages as a direct and proximate result
21 of these violations.

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24 **IV. DAMAGES**

25 19. As a direct and proximate result of his use of the ephedra-
26 containing Metabolife product, Plaintiff GERALD FISK suffered serious damage and
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1 injury to his optic nerve. He has incurred medical expenses and will incur additional
2 medical expenses in the future.

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4 20. As a direct and proximate result of his use of the ephedra-
5 containing Metabolife product, Plaintiff GERALD FISK has sustained a loss of earnings
6 and will sustain an additional loss of earnings/loss of earning capacity in the future.

7 21. As a direct and proximate result of his use of the ephedra-
8 containing Metabolife product, Plaintiff GEARLD FISK has suffered pain and anguish,
9 both mental and physical, disability, loss of ability to enjoy life, and such pain, anguish,
10 disability and loss of ability to enjoy life will continue into the future.

11
12 **V. DEMAND FOR JURY TRIAL:**

13 22. Pursuant to FRCP 38(c), Plaintiff demands a trial by jury, and prays
14 for damages in such sum as the evidence will support at the time of trial, including, but
15 not limited to, consequential and incidental damages, taxable costs and attorney fees.
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2 DATED this 10th day of June, 2005.

3 LEVINSON FRIEDMAN, P.S.

4
5 By: 

6 LANCE PALMER
7 WSBA #18141
8 Attorneys for Plaintiffs

9 BLIZZARD, MCCARTHY & NABERS, INC.

10 By: 

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17 Attorneys for Plaintiff
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